

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

NEXTERA ENERGY CAPITAL  
HOLDINGS, INC., NEXTERA ENERGY  
TRANSMISSION, LLC, NEXTERA  
ENERGY TRANSMISSION MIDWEST,  
LLC, LONE STAR TRANSMISSION, LLC,  
and NEXTERA ENERGY TRANSMISSION  
SOUTHWEST, LLC,

Plaintiffs,

v.

DEANN T. WALKER, Chairman, Public  
Utility Commission of Texas, ARTHUR C.  
D'ANDREA, Commissioner, Public Utility  
Commission of Texas, and SHELLY  
BOTKIN, Commissioner, each in his or her  
official capacity,

Defendants.

CIVIL ACTION NO. 1:19-cv-00626

**OPPOSED MOTION OF THE UNITED STATES TO PARTICIPATE IN THE  
DECEMBER 4 HEARING**

Pursuant to Local Rule CV-7 and 28 U.S.C. § 517, the United States of America consulted with the parties and respectfully requests leave to participate for at least five minutes in the hearing on Texas's Motion to Dismiss Under Fed. R. Civ. P. 12(B)(6), ECF No. 94, scheduled for December 4, 2019, at 9:30 am, Order, ECF No. 121. Plaintiffs consent to this motion; counsel for Defendants have informed us that Defendants oppose this motion for reasons that accord with Defendants' opposition to consideration of the Statement of Interest. *See generally* State of Texas's Conditional Motion for Extension of Time, ECF No. 112.

In the view of the United States, Texas has advanced in its motion to dismiss and in subsequent briefing an overly narrow reading of the dormant Commerce Clause doctrine as it

applies to state laws that discriminate in favor of entities based on an unnecessary in-state physical presence requirement and that unduly burden interstate commerce, thereby risking harm to competition in interstate commerce. *See generally* Statement of Interest of the United States of America, ECF No. 110. Moreover, FERC did not approve or authorize state laws like S.B. 1938. *See id.* at 6-8, 20. Accordingly, the United States believes that it is important to have the opportunity to present its views at the December 4 hearing and “attend to the interests of the United States.” 28 U.S.C. § 517. Additionally, the United States hopes that its expertise would assist the Court in deciding the motion. *See, e.g.,* Order at 2, *In re Cathode Ray Tube Antitrust Litig.*, 07-cv-05944 (N.D. Cal. May 15, 2019) (ECF No. 5482) (finding that the government’s participation in a hearing “will be useful to the Court” and granting the government’s motion to participate).

Respectfully submitted,

Dated: November 15, 2019

DANIEL E. HAAR  
MATTHEW C. MANDELBERG  
(California Bar No. 281240)  
Attorneys, Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Office 3229  
Washington, D.C. 20530-0001  
Tel.: (202) 598-2413  
Fax: (202) 514-0536  
Email: Matthew.Mandelberg@usdoj.gov

/s/ Matthew C. Mandelberg  
MATTHEW C. MANDELBERG

Attorneys for the United States of America

**CERTIFICATE OF SERVICE**

I certify that on November 15, 2019, I caused the foregoing to be filed through this Court's CM/ECF filer system, which will serve a notice of electronic filing on all registered users, including counsel of record for all parties.

November 15, 2019

/s/ Matthew C. Mandelberg

*Counsel for the United States*